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MEMORANDUM FOR: Legislative Counsel

SUBJECT

: Comments on S. 653

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1. This memorandum sets forth our views on S. 653, a bill to amend the Budget and Accounting Act, 1921, to provide for audits by the General Accounting Office of expenditures by intelligence agencies of the Government. The bill would provide that notwithstanding the provisions of section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C.408j(b)) or any other provisions of law, the accounts and operations of each intelligence agency shall be audited pursuant to the provisions of this statute and under such rules and regulations as may be prescribed by the Comptroller General. The audit would be done at the request of any Congressional committee having legislative jurisdiction over any intelligence agency or the appropriation therefor, and a report submitted to such requesting committee, joint committee or subcommittee.
2. Section 8(b) of the CIA Act of 1949 has provided the Director of Central Intelligence broad authority to expend monies on his certification alone without the usual audit by the General Accounting Office. Section 8(b) states:

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds;⁴⁷ and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director⁴⁸ and every such certificate shall be deemed a sufficient voucher for the amount therein certified.⁴⁹

3. It is important to make clear what are and what are not the reasons for the presence of Section 8(b), and to do this it is necessary to describe how the intelligence function differs in its security requirements from other government situations requiring protection of information. In most situations it is the substantive nature of the information that requires protection. Thus, in the military fields the flight characteristics of a fighter plane, the accuracy of a ballistic missile, or war plans and troop movements may require protection until such information is known to be in the hands of an enemy or is otherwise put in the public domain. Similarly, in the diplomatic field the substance of diplomatic negotiations may require protection to preserve important international relationships. Similarly, in the intelligence field substantive information may also require protection as when information is obtained on enemy intentions or capabilities which he believes are not known, thus enabling effective counter-measures. Safeguarding this type of information, however, does not require different accounting and reporting procedures for dealing with confidential funds.

4. The intelligence community, however, must protect another kind of information -- intelligence sources and methods. In some situations this is a simple problem to grasp. Thus, a secret agent operating abroad in a hostile climate must be protected, not only so that he can continue supplying the intelligence involved, but also because his freedom, and on occasion, his life, is at stake. The agent is living a false life and his cover must ^{be} [in] impenetrable. Such things as identity cards, credit references, family relationships, and various other details are vital to his existence. No outsider can even guess that an apparent insignificant fact may endanger his cover.

5. Other intelligence activities do not have such obvious security requirements. Foreign liaison, that is liaison with foreign intelligence and security agencies, is extremely important in fields of both positive intelligence and

counter-intelligence. Such liaisons, to be effective, depend on the confidence of each service that the other will protect the mere fact of the relationships as well as its sources and methods and sensitive information. Compromise of information brings not only protests from the foreign liaison services, but in some cases, a lessening or even cessation of their cooperation.

6. Covert action operations are by their nature complex and involve the covert cooperation of at least a few and occasionally a large number of personnel. Here again their cooperation depends on their confidence that the intelligence service they are aiding can protect such cooperation and again, no outsider or one not thoroughly familiar with the activities is capable of determining what fact, however insignificant, may expose the covert relationship with the intelligence activity. Such exposure would, of course, not only negate an effort determined by high authority to be in the national interest, but might in many cases endanger the fortunes, liberties, or even the lives of the participants. Even overt activities have their own security problems. Thus, many U.S. citizens and others willing to provide sensitive information to overt intelligence units, ^{do so only} condition that their cooperation in this respect is absolutely protected.

7. In the field of technical intelligence collection, such as the intercept of communication (COMINT), the obvious security problem is that if the foreign country is aware that an intelligence service is able to read its communications, it will take measures to baffle such collection so an important source of intelligence may be lost. Less obvious aspects of the technical collection field (SIGINT) are the need to protect new techniques of collection and to take all the necessary and sometimes most complicated steps to put such techniques into successful operation. These may involve the most secret negotiations with foreign countries for the establishment of secret collection sites. These countries may wish to cooperate but cannot do so openly due to conflicting international or domestic political considerations. The agreements so to cooperate must, therefore, be negotiated in

absolute confidence , and the cooperating country will insist that the fact of its cooperation must be protected.

8. Another technique for carrying out some of these as well as other intelligence activities and covert operations is the use of what are called "proprietary entities" [redacted]

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9. The need for special protection of intelligence sources and methods has been well recognized by officials in the Executive, Judicial, and Congressional branches of our Government. For example, the Comptroller General of the United States, Mr. Lindsay C. Warren, when requested to approve proposed legislation which subsequently was enacted as the CIA Act of 1949 examined the provision granting the Director of Central Intelligence the power to certify the expenditure of confidential funds. Mr. Warren stated that while he believed it provided "for the granting^s of much wider authority than I would ordinarily recommend for Government agencies generally, the purposes sought to be obtained by the establishment of the Central Intelligence Agency are believed to be of such paramount importance as to justify the extraordinary measures proposed therein." Mr. Warren went on to state that the "necessity for secrecy in such matters is apparent and the Congress apparently recognized this fully in that it provided in section 102(d) 3 of Public Law 253, that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure. Under these conditions, I do not feel called upon to object to the proposals advanced...."

passage of the CIA Act of 1949. The secret journals of the Continental Congress record numerous appropriations for military expeditions where the provisions for accounting were left to someone's absolute discretion or entirely omitted.

Section 107 of Title 31 of the United States Code, derived from an original Act of February 9, 1793 (C. 4, Section 2, 1 Stat. 300), permits the President to settle annually with the General Accounting Office such appropriations for foreign intercourse or treaties as he considers may be made public; with respect to those which he may think it advisable not to specify, he is authorized to direct the Secretary of State to prepare a certificate of the amount. Such a certificate is to be deemed a sufficient voucher for the sum expended.

Section 107(a) of Title 31 allows the Secretary of State since January 5, 1946, to delegate to subordinates the authority vested in him by Section 107.

Section 108 of the same Title 31, deriving from an Act of August 29, 1916 (39 Stat. 557), established the procedure for the Secretary of the Navy to account, without publicly disclosing, for expenditures

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from appropriations for obtaining information from home or abroad. His certificate is to be "deemed a sufficient voucher for the sum therein expressed to have been expended."

c. World War II Experience

11. From the very beginning of World War II the need for unvouchered expenditures grew enormously. Perhaps the best example of this need for purposes of this study would be the experience of the Office of Strategic Services. Originally its confidential funds were obtained from an appropriation for the Executive Office of the President, but later it received specific appropriations as an independent executive agency. Obviously, only a portion of its operations were sufficiently secret to require exception from the ordinary rules governing audit of Government funds. For this reason, a portion of the total appropriation each year was earmarked for expenditure for objects of a confidential nature, such expenditure to be accounted for solely on the certificate of the Director and every such certificate to be deemed a sufficient voucher for the amount therein certified. With the cooperation of the Treasury, the Bureau of the Budget and the Comptroller General, this system proved workable for wartime purposes.

13. The CIA Act continued and indeed expanded this tradition allowing use of unvouchered expenditures. Moreover, given the close interrelation of all of this Agency's activities, it could have been correctly argued that all of the funds of the Agency should be expended under the authority of Section 8(b) so that none of them would be subject to outside audit. Nevertheless, it has been the policy of the Agency since its creation to limit the exercise of this special authority to those activities which in the national interest should have the maximum security protection. To the extent possible Agency funds have been expended under the other provisions of the ~~CIA Act~~ and the vouchers for these expenditures have been available to the General Accounting Office. This policy has been exercised to such a degree that certain activities, not in themselves sensitive but conducted solely in support of highly confidential operations, are funded under general authorities without invoking the DCI's special authority to make final accounting therefor.

13. All expenditures of the Agency have been and ~~still~~ are still subject to the strictest kind of internal control and auditing by the Agency audit staff and by the Office of Management and Budget. In addition, from its inception all CIA "vouchered" expenditures were made available to and were subject to a voucher audit by representatives of the General Accounting Office. Use of the voucher audit procedure allowed the GAO to examine expenditure and collection vouchers and related documents to determine whether expenditures are made legally and solely for the objects for which appropriations are made. Use of the voucher audit procedure also allowed the CIA to protect those activities~~s~~ of a confidential, extraordinary or emergency nature.

14. Subsequent to the enactment of the CIA legislation, GAO changed its audit procedures and adopted what it termed a "comprehensive audit approach". This review includes: a determination that the expenditure of funds and the utilization of property and personnel are in the furtherance only of authorized programs or activities and that the programs and activities are conducted in an effective, eff-

icient, and economical manner; an examination of Organization structure and a review of Agency policies for conformance with legislative intent and applicability to Agency activities; and includes an examination of Agency practices and procedures in carrying out such policies.

15. In 1959, the GAO raised with the CIA Subcommittee of the House Committee on Armed Services the desirability of an expanded audit of Agency activities more in line with the regular comprehensive audit approach. At the same time the Comptroller General stated that he did "not recommend any change in section 10 (now section 8) of the Central Intelligence Agency Act" and that "any broadening of our audit activities should not include an evaluation of the intelligence activities of the Agency." Allen Dulles, then Director of Central Intelligence agreed that the GAO should expand its current audit activities in a considerable portion of the Agency, cautioning only that the comprehensive audit would have to be limited so as to remain outside the area of sensitive security operations for which by law the Director's certificate shall be deemed a sufficient voucher for the amount therein certified.

16. By 1961 the Comptroller General informed the CIA Subcommittee that it planned to discontinue the GAO audit of CIA activities. The Comptroller General acknowledged that "various steps were taken by the CIA to place the General Accounting Office in a position to make a comprehensive audit of the overt activities of CIA." He stated, however, that GAO "cannot effectively review and evaluate activities of the Support Component because the confidential and overt activities of this component are integrated to such an extent that we cannot make reasonably comprehensive audits." He further stated "we have been given sufficient access to make reasonably comprehensive reviews of the overt activities of the Intelligence Component, but such reviews, in our opinion will not be productive of significant evaluations because we cannot feasibly evaluate the extent to which needed overt information is available for collection or determine the need for the intelligence information selected for collation and use in the production of

intelligence reports." In short, the Comptroller General was arguing that the philosophy underlying GAO's comprehensive audit approach would not tolerate a distinction between overt and covert activities and expenditures.

17. Both the DCI and Mr. Vinson, Chairman of the House Committee on Armed Services requested the Comptroller General to continue to audit ~~the~~ Agency affairs on a limited basis.

18. GAO continued its limited audit of CIA for about one year. On 21 June 1962 the Comptroller General wrote Chairman Vinson expressing his continued view that security restrictions precluded an effective audit of CIA. The Comptroller General stated his belief that to conduct a maximum effective audit, "it would be necessary for our GAO audit staff to have nearly complete access to CIA activities." He continued that it would be possible to perform "reasonably comprehensive reviews...if...permitted complete access to the administrative activities, such as financial, procurement, property, and personnel management and internal review activities that are performed in support of both sensitive and nonsensitive operations of CIA." (Emphasis added.)

19. Upon consideration of the audit problems as expressed in the Comptroller General's latest letter, Chairman Vinson agreed that GAO withdraw from further audit of CIA activities. In a letter to the Comptroller General, which was drafted by the Agency, Mr. Vinson said:

...the restrictions you met with in the Central Intelligence Agency are necessary, I believe, for the proper protection of its intelligence activities and should be maintained. Also, Mr. McCone has informed us that among the reorganizational steps he has carried out is a major strengthening of the comptroller and internal audit functions in the Agency. Consequently, I believe you have met the objectives of my letter of May 18, 1961, which recommended that you continue your work at that time, and since you feel confirmed in your opinion that it is not a worthwhile effort, I am agreeable that you withdraw from further audit activities in the Central Intelligence Agency.

10. Since July 1962, the GAO has not audited CIA, but a thorough internal audit is conducted by the CIA Audit Staff and as Agency proprietary CPA firm.

continues to believe that GAO ought to be included in the CIA audit process.

We agree with the views in 31 Comp. Gen. 193 that the Director's special powers under section 8(b) do not pertain to the normal administrative or operating problems which confront the ordinary Government agency and each succeeding Director of Central Intelligence has been assiduous in limiting the exercise of this special authority to those activities requiring special protection. As in the past, our only concern is to protect sensitive intelligence sources and methods.